

BILLY J. WILLIAMS, OSB #901366

United States Attorney

District of Oregon

KEVIN DANIELSON, OSB # 065860

Assistant United States Attorney

kevin.c.danielson@usdoj.gov

1000 SW Third Avenue, Suite 600

Portland, Oregon 97204-2902

Telephone: (503) 727-1000

Facsimile: (503) 727-1117

JEFFREY H. WOOD, Acting Assistant Attorney General

SETH M. BARSKY, Section Chief

MICHAEL R. EITEL, Senior Trial Attorney

U.S. Department of Justice

Environment & Natural Resources Division

Wildlife & Marine Resources Section

999 18th Street, South Terrace, Suite 370

Denver, Colorado 80202

Tel: (303) 844-1479 | Fax: (303) 844-1350

Email: Michael.Eitel@usdoj.gov

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

**CENTER FOR BIOLOGICAL DIVERSITY,
et al.,**

Plaintiffs,

v.

U.S. BUREAU OF RECLAMATION, et al.,

Defendants,

and

ARNOLD IRRIGATION DISTRICT, et al.,

Intervenor-Defendants.

Case No.: 6:15-cv-02358-JR
(consolidated with 6:16-cv-00035-JR)

**STIPULATION AND PROPOSED
ORDER TO SETTLE PLAINTIFFS'
CLAIMS FOR ATTORNEYS' FEES
AND COSTS**

The Stipulated Settlement Agreement (hereinafter, "Agreement") is made between Plaintiffs the Center for Biological Diversity and WaterWatch of Oregon and Federal Defendants the U.S. Bureau of Reclamation, *et al.*

WHEREAS, the Center for Biological Diversity filed a lawsuit against the U.S. Bureau of Reclamation ("Reclamation") on December 18, 2015 (ECF 1, 15-cv-2358 (D. Or.));

WHEREAS, WaterWatch of Oregon filed a lawsuit against Reclamation and Central Oregon Irrigation District, North Unit Irrigation District, and Tumalo Irrigation District ("Districts") on January 11, 2016, and a First Amended Complaint on the same day (ECF 4, 16-cv-35 (D. Or.));

WHEREAS, the Center for Biological Diversity's and WaterWatch of Oregon's lawsuits were consolidated on January 20, 2016 (ECF 14);

WHEREAS, Plaintiffs, the Districts, and Reclamation, through their authorized representatives and without any admission of fact or law with respect to Plaintiffs' claims, reached a settlement resolving all claims contained in Plaintiffs' Complaint (ECF 1, 15-cv-2358) and First Amended Complaint (ECF 4, 16-cv-35), *see* ECF 72;

WHEREAS, the Court approved the Stipulated Settlement Agreement on November 9, 2016 (ECF 73);

WHEREAS, the Court has extended the time for Plaintiffs to file motions for attorneys' fees and costs (ECF Nos. 75, 77, 79);

WHEREAS, Plaintiffs have provided Federal Defendants with their contemporaneous time records and other information for their claim for attorneys' fees and costs, and counsel for Plaintiffs and Federal Defendants ("Parties") have engaged in good faith, confidential settlement negotiations concerning Plaintiffs' claims for attorneys' fees and costs;

WHEREAS, the Parties have reached an agreement as to an appropriate settlement of Plaintiffs' claims for fees and costs and agree that settlement of these claims in this manner is in the public interest and is an appropriate way to resolve Plaintiffs' claims for fees and costs; and

WHEREAS, the Parties enter the Agreement below without any admission of fact or law, or waiver of any claims or defenses, factual or legal, except as specified in the Agreement;

NOW THEREFORE, in the interests of judicial economy and to avoid further litigation over Plaintiffs' claims for attorneys' fees and costs, Plaintiffs and Federal Defendants, for good and valuable consideration, the adequacy of which is hereby acknowledged, stipulate and agree as follows:

1. Federal Defendants agree to settle all of Plaintiff Center for Biological Diversity's claims to attorneys' fees and costs in the above-captioned litigation for a total amount of \$45,440.00, and Federal Defendants agree to settle all of Plaintiff WaterWatch of Oregon's claims to attorneys' fees and costs in the above-captioned litigation for a total amount of \$40,000.00.

2. Plaintiffs agree to accept payment of \$45,440.00 (for the Center for Biological Diversity) and \$40,000.00 (for WaterWatch of Oregon) in the manner prescribed in Paragraph 3, below, in full satisfaction of any and all claims for attorneys' fees and costs that are related to the above-captioned litigation.

3. Federal Defendants agree to issue check(s) totaling \$45,440.00 or, as appropriate, make wire transfer(s) of that specified amount to the Advocates for the West Lawyer Trust Account. Federal Defendants agree to issue a check in the amount of \$40,000.00 or, as appropriate, make a wire transfer of the specified amount to Earthjustice's IOLTA account. Undersigned counsel for Plaintiffs shall provide to the undersigned counsel for Federal Defendants the appropriate account number and any other information needed to make payment. Federal Defendants agree to submit all necessary paperwork to funding authorities at the Department of Treasury and/or the Department of the Interior within thirty (30) business days of receipt of the signed court order approving this Stipulation or Plaintiffs providing the information required to facilitate the payment, whichever is later.

4. This Agreement shall apply to and be binding upon the Parties, their members, delegates, and assigns. The undersigned representatives of the Parties certify that they are fully

authorized to enter into the terms and conditions of this Agreement and to legally bind the Parties to it. Plaintiffs and their attorneys agree to hold Federal Defendants harmless in any litigation, further suit, or claim arising between Plaintiffs and their attorneys from the payment of the agreed-upon settlement amount pursuant to this Agreement.

5. This Agreement is executed solely for the purpose of compromising and settling Plaintiffs' claims for attorneys' fees and costs in the above-captioned case. Nothing in this Agreement shall constitute, or be construed to constitute, a precedent in any other context. Nothing in this Agreement shall be cited in any other litigation except as necessary to enforce the terms of the Agreement. By this Agreement, Federal Defendants do not waive any right to contest fees or costs claimed by Plaintiffs or Plaintiffs' counsel in any future litigation, and Plaintiffs do not waive any right to claim such fees or costs in any future litigation.

6. Any obligations of the United States to expend funds under this Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Agreement shall not be construed to require the United States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

7. This Agreement represents the entirety of the Parties' commitments with regard to settlement of attorneys' fees and costs in the above-captioned case. The terms of this Agreement shall become effective upon approval by this Court of this Agreement.

8. In emails dated May 16, 2017, counsel for Plaintiffs, Lauren Rule and Janette Brimmer, authorized Michael R. Eitel, counsel for Federal Defendants, to sign this joint stipulation and enter it in the CM/ECF system.

Respectfully submitted on May 17, 2017.

/s/ Michael R. Eitel
 MICHAEL R. EITEL
 Senior Trial Attorney (Neb. Bar #22889)
 U.S. Department of Justice

/s/ Lauren M. Rule *with permission
 Lauren M. Rule
 3115 NE Sandy Blvd. Suite 223
 Portland, OR 97232

Environment & Natural Resources
Division
Wildlife & Marine Resources Section
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Tel: (303) 844-1479
Fax: (303) 844-1350
Email: Michael.Eitel@usdoj.gov
Attorney for Federal Defendants

Tel: 503-914-6388
Email: lrule@advocateswest.org

*Attorney for Plaintiff the Center for
Biological Diversity*

/s/ Janette Brimmer *with permission

Janette Brimmer
Earthjustice
705 2nd Avenue, Suite 203
Seattle, WA 98104
Tel: 206-343-7340, ext. 1029
Email: jbrimmer@earthjustice.org

*Attorney for Plaintiff WaterWatch of
Oregon*

[PROPOSED] ORDER

The Court hereby approves and orders each and every term of this Stipulated Settlement Agreement. IT IS SO ORDERED.

DATED this _____ day of _____, 2016

The Honorable Ann Aiken
United States District Judge

CERTIFICATE OF SERVICE

I certify that on May 17, 2017, the foregoing was electronically filed through the Court's electronic filing system, which will generate automatic service upon all Parties enrolled to receive such notice.

/s/ Michael R. Eitel